

Article 20.

Miscellaneous Regulatory Provisions.

§ 113-261. Taking fish and wildlife for scientific purposes; permits to take in normally unauthorized manner; cultural and scientific operations.

(a) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife are hereby granted the right to take marine, estuarine, and wildlife resources within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, to survey fish and wildlife populations in the State, to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife, to propagate animals, birds, and fish, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements of this Subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Wildlife Resources Commission with respect to wildlife may provide for the issuance of permits, on such terms as they deem just and in the best interest of conservation, authorizing persons to take such fish or wildlife through the use of drugs, poisons, explosives, electricity, or any other generally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. No permit to take wildlife other than fish by means of poison may be issued, however, unless the provisions of Article 22A are met.

(c) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife may, as necessary in their legitimate operations, take fish and wildlife in a manner generally prohibited by this Subchapter or by rules made under the authority of this Subchapter. (1915, c. 84, s. 7; C.S., s. 1886; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1987, c. 827, s. 98.)

§ 113-262. Taking fish or wildlife by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish or wildlife prohibited.

(a) Except as otherwise provided in this Subchapter, or in rules permitting use of electricity to take certain fish, it is a Class 2 misdemeanor to take any fish or wildlife through the use of poisons, drugs, explosives, or electricity. This subsection does not apply to any person lawfully using any poison or pesticide under the Structural Pest Control Act of North Carolina of 1955, as amended, or the North Carolina Pesticide Law of 1971, as amended.

(b) Except under a valid permit it is unlawful to possess any fish or wildlife:

- (1) Bearing evidence of having been taken in violation of subsection (a); or
- (2) With knowledge or reason to believe that the fish or wildlife was taken in violation of subsection (a). (1883, c. 290; Code, s. 1094; Rev., s. 3417; C.S., ss. 1968, 2124; 1927, c. 107; 1935, c. 486, ss. 18-20; 1939, c. 235, s. 1; 1949, c. 1205, ss. 2, 3; 1953, c. 1134; 1955, c. 104; c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1959, c. 207; c. 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3 1/2; 1965, c. 904, s. 1; c. 957, s. 2; 1967, c. 728, s. 1; c. 858, s. 1; c. 1149, s. 1.5; 1969, c. 75; c. 140; 1971, c. 439, ss. 1-3; c. 449, s. 1; c. 461; c. 648, s. 1; c. 899, s. 1; 1973, c. 1096; c. 1210, ss. 1-3, 5; c. 1262, s. 18; 1975, c. 669; c. 728; 1977, c. 493; c. 794, s. 4; 1979, c. 830, s. 1; 1987, c. 827, s. 98; 1993, c. 539, s. 846; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-263. Inspecting plans and specifications of dams.

The Department and the Wildlife Resources Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Wildlife Resources Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Wildlife Resources Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-264. Regulatory power over agency property; public hunting opportunities; scheduling of managed hunts.

(a) The Department and the Wildlife Resources Commission are granted the power by rule to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department or the Wildlife Resources Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, game lands, wildlife refuges, public waters, public mountain trout waters, and all other real and personal property owned, leased, controlled, or cooperatively managed by either the Department or the Wildlife Resources Commission.

(a1) Every wildlife protector and every law enforcement officer of this State and its subdivisions shall have the authority within his or her established jurisdiction to enforce the rules promulgated pursuant to the power granted by this section regarding the willful removal of, damage to, or destruction of any property of the Department or the Wildlife Resources Commission.

(a2) To the extent that subsection (a1) of this section conflicts with any provision of any local act, subsection (a1) of this section prevails.

(b) Unless a different level of punishment is elsewhere set out, willful removal of, damage to, or destruction of any property of the Department or the Wildlife Resources Commission is a Class 1 misdemeanor.

(c) The Wildlife Resources Commission may cooperate with private landowners in the establishment of public hunting grounds. It may provide for the posting of these areas and of restricted zones within them, require that authorized hunters obtain written permission from the owner to hunt, enforce general laws concerning trespass by hunters and concerning damage or injurious activities by hunters and by others carrying weapons on or discharging weapons across public hunting grounds or restricted zones.

(d) The Wildlife Resources Commission may schedule managed hunting opportunities for any species of wildlife administered through permits. Permit recipients shall be selected at random by computer. The Wildlife Resources Commission may require by rule that an applicant 16 years of age or older have the required hunting license before

the drawing for the hunt, and that an applicant less than 16 years of age apply as a member of a party that includes a properly licensed adult if the young applicant does not have the proper hunting license. When licenses are required prior to the drawing, all applications shall be screened for compliance. A nonrefundable fee of eight dollars (\$8.00) will be required of each applicant.

(d1) For applications sold directly through the Wildlife Resources Commission by telephone, mail, online, or at a service counter, the Wildlife Resources Commission may charge a fee of two dollars (\$2.00) per transaction.

(e) A wildlife protector or law enforcement officer of this State or its subdivisions may have a vehicle towed at a Commission-owned or operated public boating access area if the vehicle:

- (1) Is parked in an area other than one designated for parking; or
- (2) Is left by an individual for a purpose other than launching, operating, or retrieving a vessel. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1983, c. 403; 1985 (Reg. Sess., 1986), c. 996, s. 2; 1987, c. 827, s. 98; 1989, c. 221; c. 642, s. 1; 1993, c. 539, s. 847; 1994, Ex. Sess., c. 24, s. 14(c); 2005-82, s. 1; 2005-164, s. 2; 2018-90, s. 1.)

§ 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters.

(a) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Environmental Management Commission.

(b) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Marine Fisheries Commission and the Wildlife Resources Commission may by rule impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(c) to (e) Repealed by Session Laws 1987, c. 636, s. 2. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C.S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2; 1971, c. 690, s. 4; 1973, c. 1262, ss. 18, 28; 1985 (Reg. Sess., 1986), c. 996, s. 3; 1987, c. 636, s. 2; c. 827, s. 98.)

§ 113-266. Interference with artificial reef marking devices.

It shall be a Class 1 misdemeanor for any person to destroy, injure, relocate, or remove any navigational aids, buoys, markers, or other devices lawfully set out by the Division of Marine Fisheries in connection with the marking of any artificial reef in the coastal waters of the State and in the Atlantic Ocean to the seaward extent of the State's jurisdiction as now or hereafter defined. (1985 (Reg. Sess., 1986), c. 996, s. 1; 1993, c. 539, s. 848; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-267. Replacement costs of marine, estuarine, and wildlife resources; rules authorized; prima facie evidence.

To provide information to the courts and other officials taking action under G.S. 15A-1343(b1)(5), under G.S. 143-215.3(a)(7), or under any other pertinent authority of law, the Marine Fisheries Commission and the Wildlife Resources Commission are authorized to adopt rules setting forth the factors that should be considered in determining the replacement costs of fish and wildlife and other marine, estuarine, and wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed. The Marine Fisheries Commission and the Wildlife Resources Commission may make similar rules respecting costs of investigations required by G.S. 143-215.3(a)(7) or which are made pursuant to a court order. For common offenses resulting in the destruction of marine, estuarine, and wildlife resources the Marine Fisheries Commission and the Wildlife Resources Commission may adopt schedules of costs which reasonably state the likely replacement costs and necessary investigative costs when appropriate. Rules of the Marine Fisheries Commission and the Wildlife Resources Commission stating scheduled costs or cost factors must be treated as prima facie evidence of the actual costs, but do not prevent a court or jury from examining the reasonableness of the rules or from assessing the special factors in a case which may make the true costs either higher or lower than the amount stated in the rules. The term "replacement costs" must be broadly construed to include indirect costs of replacement through habitat improvement or restoration, establishment of sanctuaries, and other recognized conservation techniques when direct stocking or replacement is not feasible. (1979, c. 830, s. 1; 1985, c. 509, s. 7; 1987, c. 827, s. 98.)

§ 113-268. Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party. (1987, c. 636, s. 1; 1989, c. 727, s. 112; 1993, c. 539, s. 849; 1994, Ex. Sess., c. 24, s. 14(c); 1998-225, s. 3.9.)

§ 113-269. Robbing or injuring hatcheries and other aquaculture operations.

(a) The definitions established in G.S. 106-758 are incorporated by reference into this section. For the purposes of this section, a shellfish lease issued pursuant to G.S. 113-202 is defined as an aquaculture facility only when it has been amended pursuant to G.S. 113-202.1 to authorize use of the water column and when it is or has been regularly posted and identified in accordance with the rules of the Marine Fisheries Commission.

(b) It is unlawful for any person without the authority of the owner of an aquaculture facility to take fish or aquatic species being cultivated or reared by the owner from an aquaculture facility.

(c) It is unlawful for any person to receive or possess fish or aquatic species stolen from an aquaculture facility while knowing or having reasonable grounds to believe that the fish or aquatic species are stolen.

(d) It is unlawful for any person to willfully destroy or injure an aquaculture facility or aquatic species being reared in an aquaculture facility.

(e) Violation of subsections (b) or (c) for fish or aquatic species valued at more than four hundred dollars (\$400.00) is punishable under G.S. 14-72. Violation of subsections (b) or (c) for fish or aquatic species valued at four hundred dollars (\$400.00) or less is a Class 1 misdemeanor.

(f) Violation of subsection (d) is a Class 1 misdemeanor.

(g) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with G.S. 15A-1343, restitution to the victim for the amount of damage to the aquaculture facility or aquatic species or for the value of the stolen fish or aquatic species.

(h) The district attorney shall dismiss any case brought pursuant to subsections (b) and (c) if defendant produces a notarized written authorization for taking fish or aquatic species from the aquaculture facility or if the fish or aquatic species taken from a shellfish lease aquaculture facility was not a shellfish authorized for cultivation on the lease. (1989, c. 281, s. 1; 1993, c. 539, ss. 850, 851; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-270. Use of oyster shells by landscape contractors prohibited.

(a) No landscape contractor shall use oyster shells as a ground cover.

(b) Enforcement of the prohibition set forth in this section shall be under the jurisdiction of the Marine Fisheries Commission.

(c) For purposes of this section, landscape contractor shall have the definition set forth in G.S. 89D-11. (2015-241, s. 14.7(a).)